

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 3 1994

In the Matter of)
)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act)
Competitive Bidding)

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

GTE Service Corporation and its affiliated GTE
domestic telephone, equipment, and service
companies

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SUMMARY

The Second Report and Order addresses a host of complex issues in implementing competitive bidding in certain radio services. In three limited respects, GTE offers its suggestions for improving these policies and procedures. GTE's goal in seeking partial reconsideration is to ensure that auctions are conducted in a fully open and informed process that permits maximum bidder flexibility consistent with efficient operation.

To that end, the petition for partial reconsideration initially addresses the need for additional information about the applicants participating in a particular auction in two respects. First, the Commission should require full disclosure of the identity of the real parties in interest behind each and every applicant. This information will help to ensure the legitimacy of every participating bidder. Second, the Commission should identify the participants in a particular auction. This knowledge may impact the choices made by competing bidders and avoids the pitfalls associated with anonymous, secretive bidding. In GTE's view, it is critical that the identity of any bidder be fully and completely disclosed, and that this information be known and available throughout all phases of an auction.

The petition for partial reconsideration next addresses the activity rules and upfront deposit policy adopted by the Commission. GTE concurs that substantial upfront payments are necessary to ensure the legitimacy of applicants, and that activity rules serve an important function in the conduct and closure of an auction. The choices made in the Second Report and Order, however, unnecessarily restrict the flexibility of multi-market bidders to participate in different bidding rounds, and may even discourage full and active participation by some interested parties. The Commission accordingly should adopt simplified bidding rules and should permit multi-market bidders to make use of an interest-bearing evergreen deposit account.

Finally, the petition recommends the use of a standby queue mechanism — which provides access to more information about bids for licenses and license combinations — if the Commission retains its 10 MHz allocations for PCS. This mechanism will facilitate the ability of entities to combine the 10 MHz blocks into larger spectrum blocks or to design individualized geographic service areas. This flexibility will further the public interest by permitting interested parties to implement the service areas and blocks of frequencies they believe will best meet user needs.

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PETITION FOR PARTIAL RECONSIDERATION

GTE Service Corporation ("GTE"), on behalf of the GTE domestic telephone, equipment, and service companies, respectfully submits this petition for reconsideration of the Second Report and Order in the above-captioned proceeding.¹ GTE seeks reconsideration of three aspects of the Commission's decision. First, the Commission should alter its pre-auction application filing rules to require auction participants to provide full disclosure of all real parties in interest² associated with a particular applicant and should disclose the identity of bidders participating in an auction. Second, the Commission should revise its activity rules and upfront deposit plan in order to make the functioning of the auctions more successful, as detailed below. Third, to the extent that the Commission retains allocations of 10 MHz blocks in the

¹ Implementation of Section 309(j) of the Communications Act Competitive Bidding, FCC 94-61 (rel. Apr. 20, 1994) [hereinafter Second Report and Order]. Public Notice of the Second Report and Order was given at 59 Fed. Reg. 22980 (May 4, 1994).

² The Commission has defined "real party in interest" disclosure requirements in Section 22.13(a)(1) of its Rules, 47 C.F.R. § 22.13(a)(1) (1993). GTE contemplates that this information would include disclosures about subsidiaries and affiliates, as well as all partners involved in a partnership applicant and all shareholders with a greater than 5 percent interest in a corporation. In the event that a partner or a shareholder itself is a partnership or corporation, the appropriate disclosure would include ownership information for each such entity as well.

personal communications service (“PCS”), the rules should be altered to deploy the “standby queue” mechanism tested during recent competitive bidding experiments. Adoption of these revisions will enhance the successful functioning of the auctions and help to ensure that they are conducted consistent with the goals established by the Commission.

I. THE COMPETITIVE BIDDING PROCESS WILL BE BEST SERVED BY FULL PUBLIC DISCLOSURE OF REAL PARTIES IN INTEREST

A. Applicants Should Be Required To Provide Full Ownership Disclosure in Their Short Form Applications

In its comments and reply comments in this proceeding, GTE documented the numerous benefits to be gained from requiring potential auction participants publicly to disclose their ownership information. By enabling the Commission and competing applicants to assess at the outset the legitimacy of auction applicants, full disclosure facilitates the award of licenses to qualified and eligible service providers. Just as importantly, full disclosure promotes open and more informed bidding decisions. Indeed, the Commission acknowledges in the Second Report and Order that “[m]aximizing the information available to bidders” has important public interest benefits.³

Given the Commission’s emphasis on the value of maximum information in the competitive bidding process, GTE was surprised by the cursory treatment accorded the issue of disclosure of ownership information for competing applicants. Without any explanation or any discussion of the specific arguments raised by GTE in favor of full disclosure of bidder ownership, the Second Report and Order adopts a pre-auction procedure that requires only the most elementary information to be furnished in the

³ Second Report and Order at ¶ 158.

short form application. Indeed, the Second Report and Order devotes one paragraph to outlining the submission requirements, simply stating that applicants will be required to provide the following information: (1) the license(s) for which the applicant wishes to bid; (2) the applicant's name; (3) the identity of the person(s) authorized to make or withdraw a bid; (4) certifications that the applicant is legally, technically, and financially qualified and is in compliance with the foreign ownership provisions and any other service specific qualification rules; and (5) a certification that the applicant satisfies any financial qualifications requirements for the particular service in question.⁴

In a footnote, the Commission explains that a corporate applicant will be required to tender the name and address of a corporate office and the name and title of an officer or director. If an applicant is a partnership or a trust, it will be required to provide the name, citizenship and address of all partners or trustees, respectively.⁵ These requirements hardly constitute full ownership disclosure and cannot be expected to provide useful insight into the real parties in interest.

In light of the Commission's past experiences, the flaws inherent in such an approach should be readily apparent. As GTE noted in its opening comments, "[o]ne need only look at the cellular applications filed for rural service areas ('RSAs') to see that often the applicant's name provides little or no indication as to its true identity, and consequently, its financing capability."⁶ Not surprisingly, many of the winning RSA applications were dismissed as deficient, filed by speculators with little or no experience in providing service. The new short form application seeks even less information.

While GTE understands the Commission's desire for simplified application procedures, the evidence weighs in favor of adopting greater ownership disclosure as

⁴ Id. at ¶ 166.

⁵ Id. at n.125.

⁶ See Comments of GTE, PP Docket No. 92-253, at 11 (filed Nov. 10, 1993) [hereinafter Comments of GTE].

advocated throughout this proceeding by GTE. Accordingly, GTE requests that the Commission revisit its decision to require minimal ownership information in the short form application and instead require full and complete disclosure.

B. The Identity of Bidders During the Bidding Process Also Must Be Known

The Second Report and Order explains that, upon timely receipt of the upfront payments, the Commission will issue a Public Notice “announcing the names of all applicants that have been determined to be qualified to bid.”⁷ Apparently, each applicant listed on this public notice will be issued a bidder identification number under separate cover, which the bidder will then be required to tender when submitting bids.⁸ During multiple round auctions, the Commission will “announc[e] bidder identification numbers and bid amounts but not the identities of the bidders.”⁹

GTE believes that the rules should be revised to incorporate a mechanism whereby the identity of the bidder associated with each bidder identification number would be disclosed. In order to be successful in an ascending bid auction, a bidder must construct a strategy based on its own valuation of the spectrum as well as estimates of its competitors’ valuations, and the past bids of all other bidders. In this fashion, bidders must anticipate and respond to their competitors’ actions. A fundamental component of this exercise, however, is knowledge of who the competitors are. Such information allows bidders to make more reasoned decisions during the bidding process, altering strategies as necessary.

The Commission’s sole justification for depriving auction participants of this crucial information is a concern for collusion. The Second Report and Order, however,

⁷ Second Report and Order at ¶ 168.

⁸ Id.

⁹ Id. at ¶ 158.

includes other mechanisms for minimizing improper collusion. Parties must identify in their short form applications any agreements, arrangements or understandings that they have entered into with other bidders regarding the amount of their bid, bidding strategies or the particular licenses on which they will or will not bid before the identities and ownership of the other bidders are published. More importantly, “after such applications are filed and prior to the time that the winning bidder has made its required down payment, all bidders will be prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders”¹⁰ other than those identified. Any parties violating this rule will be subject to an investigation by either the Commission or the Department of Justice, as well as possible forfeiture of their down payment or their full bid amount, revocation of their license(s), and prohibition from participating in future auctions.¹¹ Given these penalties, there can be little fear that parties will enter into bid rigging agreements subsequent to learning the identities of competing bidders.¹²

Studies show that increases in available information raise the level of competition within any auction.¹³ As discussed above, even the Commission has

¹⁰ Id. at ¶ 225.

¹¹ Id. at ¶ 226.

¹² The Australian experience suggests that full disclosure of the identity of the bidders during the auction process may prevent anticompetitive behavior. In that case, the winning bidders of two satellite-television service licenses had submitted a series of highly speculative cascading bids. Lacking strong financial backing and possessing little experience in operating television networks, they deliberately defaulted on their winning bids but remained in contention as the licenses were re-awarded to the next highest bidders — themselves. After much delay, one of the original auction winners, Ucom Proprietary Ltd., was finally awarded a license for \$84 million, a fraction of its original \$152 million bid. Clearly, disclosure of bidders’ identity would help alleviate this problem. See M. Lewyn, What Price Air?, Bus. Wk., Mar. 14, 1994, at 48; E. Tagaza, Australia Changes TV Rules Again, Fin. Times, Nov. 9, 1993, at 4.

¹³ Schroepfer, Allocating Spectrum Through the Use of Auctions, 14 Hastings Comm. & Ent. L.J. 35 (1991).

acknowledged that maximizing the information available to bidders increases the “efficiency of license assignments by providing bidders with useful information about the likely availability of complementary services and standards both inside and outside the areas they wish to serve.”¹⁴ In addition, access to bidder identification information may raise the value estimates of auction opponents, thereby increasing revenue from the competitive bidding process while ensuring award to the bidder who most highly values the license. In contrast, the reduced level of information associated with secretive bidding may produce a failure to capture the full market value of a license.

For these reasons, GTE recommends that the Commission publish a public notice or other notification identifying the entity associated with each bidder identification number in advance of each auction. As demonstrated above, such a procedure maximizes information flow and efficient bidding without sacrificing important consumer safeguards.

II. THE COMMISSION’S ACTIVITY RULES AND UPFRONT PAYMENT/DEPOSIT AMOUNTS SHOULD BE REVISED IN ORDER TO MAKE THE AUCTIONS FUNCTION MORE SUCCESSFULLY

The Second Report and Order has adopted generally applicable activity rules “[i]n order to ensure that simultaneous auctions with our preferred simultaneous stopping rule close within a reasonable period of time . . . [and] to prevent bidders from waiting until the end of the auction before participating.”¹⁵ The Commission further stated that, “[w]here we decide to employ an activity rule, we will seek one that (1) moves auctions along at an appropriate speed, (2) provides bidders with the sufficient

¹⁴ Second Report and Order at ¶ 158.

¹⁵ Id. at ¶ 133.

flexibility to pursue a wide range of alternative bidding strategies, and (3) is simple and clearly understood by participating bidders.”¹⁶

Partially related to these activity rules is the upfront payment amount set by the Commission. The purpose of such payments, to be submitted as a pre-condition to bidding, is “[t]o ensure that only serious, qualified bidders participate in [FCC] auctions.”¹⁷ The general rule adopted in the Second Report and Order is that “a bidder must submit an upfront payment equal to \$0.02 per pop per MHz for the largest combination of MHz-pops the bidder anticipates bidding on in any single round of bidding.”¹⁸ The Commission has explicitly recognized the inter-relationship between its activity rule and the calculation of the upfront deposit amount.¹⁹

GTE firmly believes that the upfront payment procedures and the activity rules should ensure that applicants are financially qualified while enhancing the successful operation of the auctions. For the reasons stated in the Second Report and Order and its comments in this proceeding, GTE is of the view that the establishment of a substantial upfront payment helps to ensure the financial qualification of a bidder at the same time it aids in eliminating ineligible or unqualified bidders.²⁰ As detailed below, however, the specific upfront payment formula adopted in the Second Report and Order, when combined with the activity rule, unnecessarily restricts bidder flexibility.

¹⁶ Id. at ¶ 134.

¹⁷ Id. at ¶ 169.

¹⁸ Id. at ¶ 172.

¹⁹ Id.

²⁰ Comments of GTE at 10.

A. The Activity Rule Restricts Bidder Flexibility And Should Be Modified To Facilitate Multi-Market Bidding Strategies

In auctions where a simultaneous stopping rule is deployed, the Commission has stated that “its preferred activity rule will be a three stage Milgrom-Wilson rule.”²¹ The Commission will set specific parameters, “including the minimum required participation level during each stage and the overall activity level specified in the transition rule between auction stages,”²² for particular services in individual orders. The basic activity rule proposal outlined in the Second Report and Order contains the following elements:

- Bidders would be limited to bidding on licenses encompassing no more than the number of MHz-pops covered by their upfront payment. This payment must be equal to \$0.02 per pop per MHz for the maximum number of combined MHz-pops.
- Bidders would have flexibility to shift their bids among any licenses for which they have applied as long as the total MHz-pops encompassed by those licenses does not exceed the number for which they made an upfront payment, to preserve maximum eligibility.
- Bidders would have to maintain some minimum activity level during each round of the auction.
- During the first stage of the auction, a bidder would be required to be active on licenses encompassing one-third of the MHz-pops for which it is eligible; falling below the prescribed activity level would lead to a reduction in eligibility.
- During the second stage of the auction, bidders would be required to be active on two-thirds of the MHz-pops for which they are eligible.

²¹ Second Report and Order at ¶ 144. This contrasts with the initial Milgrom-Wilson proposal, which “simply required each bidder to be active on at least one license in each round of bidding.” *Id.* at ¶ 135. Being “active” in turn was defined as either having the high bid for the particular license from the previous round or submitting a bid that exceeds the previous round’s high bid for that license by at least the minimum bidding increment. *Id.*

²² *Id.*

- During the third stage of the auction, bidders would be required to be active on licenses encompassing all of the MHz-pops for which they are eligible.
- The auction would move from stage one to stage two when, over three rounds of bidding, the high bid has changed on five percent or fewer of the licenses being auctioned.²³ Stage three would begin when the high bid has changed on two percent or fewer licenses over three rounds.
- To minimize the consequences of clerical errors and to compensate for unusual circumstances that somehow delay preparation of a bid or its submission on a particular day, the Commission generally will allow five automatic waivers (for failure to meet the minimum bid activity requirement) during the course of an auction, with the discretion to grant additional waivers where warranted by circumstances beyond the control of the bidder.

This plan severely — and unnecessarily — restricts bidder flexibility “to pursue a wide range of alternative bidding strategies.”²⁴ While GTE recognizes that this goal must be balanced with the other policies sought to be implemented by the Commission in designing its competitive bidding rules,²⁵ the plan reflected in the Second Report and Order would in fact foreclose many important bidding strategies.²⁶

The modified Milgrom-Wilson activity rule unnecessarily complicates the auction and limits the ability of bidders to revise their plans throughout the course of the auction. For example, in a situation where there are value interdependencies between properties, a bidder may only be interested in some properties if that bidder can also acquire other key properties in the auction. Under the modified Milgrom-Wilson rule, the bidder could be forced to choose between dropping out of the auction prematurely

²³ Id. at ¶ 140.

²⁴ Id. at ¶ 134.

²⁵ The other goals enunciated by the Commission in designing its activity rule include: (1) moving auctions along at an appropriate speed; and (2) providing a rule that is simple and clearly understood by bidder participants. Id.

²⁶ See id.

or staying active in markets that may prove to be less valuable if the bidder loses out in the other key markets.

These activity rules also restrict a bidder's ability to modify bidding plans if additional information revealed during the latter stages of the auction causes the bidder to become interested in additional properties. In both cases, the activity rules operate to encourage artificial bidding activity that is inconsistent with the bidder's true intent, and can lead to results that contradict one of the primary objectives of the Commission in adopting these activity rules — namely, to give bidders the greatest degree of flexibility to revise their bidding plans during the course of the auction itself.

The modified Milgrom-Wilson rules operate to discourage qualified entities from participating as fully and as actively in the competitive bidding process as they might otherwise do with a different combined activity rule and upfront payment policy. From the Commission's perspective, this means that some licenses may not be awarded to the entity placing the highest value on them, and the revenues to be derived from the competitive bidding process will be unnecessarily reduced. GTE recognizes the Commission's desire to balance several competing goals and thus to deploy auction policies and rules that both ensure the auctions are not unduly delayed and provide maximum bidding strategy flexibility. However, as discussed above, GTE believes that the balance struck by the Second Report and Order unduly restricts the flexibility of applicants to alter their bidding strategies to take into account information that develops during the course of an auction.

GTE suggests that the Commission's objectives for its auction rules can best be accomplished by adoption of the Milgrom-Wilson activity rule as originally proposed in lieu of the modified Milgrom-Wilson rule reflected in the Second Report and Order. As noted above,²⁷ the original proposal requires only that a bidder remain active on one

²⁷ See note 21 *supra*.

property in order to remain eligible to later bid on any property or combination of properties for which the bidder has made sufficient upfront deposits.

B. An Interest-Bearing Evergreen Deposit Procedure Should Be Adopted

Pursuant to the FCC's current competitive bidding rules, entities interested in a number of markets or seeking to participate with maximum flexibility in an auction would be required to deposit substantial sums of money with the Commission. The Second Report and Order explicitly acknowledges "the likely magnitude of some upfront payments."²⁸ Moreover, the Commission has indicated that, at present, it is not currently authorized to establish interest-bearing accounts.²⁹ While the Commission has committed to make "prompt" refunds of the upfront payments of unsuccessful bidders, it further states that, "[i]n some circumstances, it may be appropriate to retain upfront payments until after the winning bidders have tendered their down payments"³⁰ Whatever the Commission's good intentions, this means that, in auctions involving PCS authorizations, substantial sums of money — without any accrual of interest — could be tied up and inaccessible to an auction participant for extended periods of time.

The combination of the modified Milgrom-Wilson activity rule and the upfront deposit policies operates to unduly restrict a bidder's auction activity, and may ultimately controvert the bidder's intent. In conjunction with the activity rule modifications suggested above, GTE believes that maximum bidder flexibility can best

²⁸ Id. at ¶ 188.

²⁹ Id. at n.142 (citing Notice of Proposed Rule Making in PP Docket No. 93-253, 8 FCC Rcd 7635 (1993) at n.100.) The Commission has stated that it is "attempting to obtain the necessary authorization that will permit the payment of interest on upfront payments and deposits." Second Report and Order at n.142.

³⁰ Second Report and Order at 187.

be achieved by modifying the deposit rules to give bidders the flexibility to add or withdraw deposit funds during the course of the auction, consistent with their need to modify bidding plans based on new information revealed during the auction.

GTE has previously placed on the record the concept of an interest-bearing “evergreen deposit plan” that would permit the bidder to supplement the required upfront or qualifying deposits during the course of the auction to reflect and permit additional bidding activity not contemplated at the outset of the auction. The ability to supplement qualifying deposits accomplishes the Commission’s objectives of ensuring that only serious, financially qualified bidders participate and simultaneously providing the bidder with maximum flexibility to adjust bidding plans during the course of the auction.³¹

A key component of GTE’s deposit plan is that this accumulation of qualifying funds be interest-bearing. Vigorous bidding activity for multiple markets will require interested bidders to tender substantial down payment of funds, which will be tied up and inaccessible for an extended period of time. The Commission needs to ensure that it has the requisite authority to permit the accumulation and payment of interest. Such policy will ensure the active participation of financially qualified bidders.

GTE believes that its approach will maximize participation by the largest, most diverse number of qualified entities. Permitting reliance on an interest-bearing evergreen deposit account substantially mitigates the financial burden on bidders who commit substantial funds that will be tied up and inaccessible for an extended period of time. Dispensing with the modified Milgrom and Wilson activity rule — and permitting an entity to continue bidding in the next round so long as it has participated at some level in the current round — affords maximum flexibility for qualified entities to adapt

³¹ See Letter to William Caton from Carol L. Bjelland (Re: Ex Parte — PP Docket 93-253) (Feb. 16, 1994).

their bidding strategies to the activities of other applicants. Having this flexibility will encourage greater numbers of interested, qualified entities to participate in the proceedings.

Maximum participation by qualified entities provides two important benefits. First, the auctions will more likely result in the award of licenses to the entity placing the highest value on the radio spectrum associated with a particular license. This also will maximize revenues to the U.S. Treasury. Second, a competitive bidding process structured in this fashion is more likely to lead to the most efficient spectrum use. Consequently, the Commission should revise its activity rules and adopt an interest-bearing evergreen security deposit procedure to better achieve the Commission's goals in this docket.

III. THE COMMISSION SHOULD PRESCRIBE ALTERNATIVE BIDDING MECHANISMS FOR THE PCS 10 MHz BLOCKS

GTE has previously demonstrated to the Commission in its comments in the PCS docket that the value of 10 MHz blocks, particularly when compared to 20 or 30 MHz blocks, may be limited. Although this matter is still on reconsideration before the Commission, GTE recognizes that the final order in the PCS docket may well retain some 10 MHz blocks. In that event, GTE believes that the Commission should adopt a "standby queue" bidding mechanism for such blocks.³²

The standby queue mechanism was considered in the experiments sponsored by the National Telecommunications and Information Administration ("NTIA") and conducted at the California Institute of Technology ("Caltech").³³ These experiments

³² GTE points out that this proposal is specifically tied to 2 GHz PCS license awards. GTE thus presents it for consideration by the Commission in adopting the specific competitive bidding policies and rules to be applied to 2 GHz PCS.

³³ See Letter to Honorable Reed Hundt from Larry Irving, Assistant Secretary for Communications and Information, PP Docket No. 93-253 (filed Feb. 28, 1994) (hereinafter NTIA Caltech Letter).

specifically sought to evaluate NTIA's proposals for the conduct of PCS auctions. This included a consideration of bidders' ability to deduce information about needed increases in bid levels to win a particular license, which in turn specifically referenced the standby queue mechanism. As described by NTIA:

The "stand-by queue" feature of [Adaptive User Selective Mechanism software] allows parties seeking individual licenses to coordinate their bids in order to beat the currently prevailing bid for a combination of licenses. The stand-by queue displays the amount that other bidders are willing to pay for the licenses that are part of a combination bid. A bidder can determine from the sum of these amounts how much to raise his or her own bid in order to surpass the current winning bid.³⁴

Adopting this mechanism for the 10 MHz blocks would facilitate a bidder putting together a block of 20 or 30 MHz in a particular geographic area. The process would allow a bidder seeking to combine the smaller blocks into a larger set of frequencies to obtain full information about the status of bidding on the individual blocks in a convenient manner that permits bidders to act in a rational and efficient manner.

In addition, bidders could combine blocks on a geographic basis, seeking to establish a service area other than those defined by the Commission. For example, a bidder may not want to provide service across a full MTA, but may want to combine a subset of the BTAs associated with that MTA.

Adoption of the standby queue proposal thus would enhance the flexibility of potential service providers to design appropriate areas of service consistent with their business plans and financial capabilities. Facilitating achievement of this goal is consistent with the policies enunciated by the Commission in this proceeding as well as in the PCS docket.

³⁴ NTIA Caltech Letter at n.6.

IV. CONCLUSION

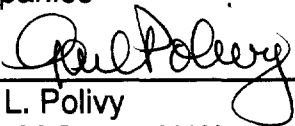
GTE generally supports the action taken by the Commission in the Second Report and Order in this docket. As detailed above, however, three areas of policies should be reconsidered:

- Full disclosure of applicant ownership and identification of bidders during the auctioning process;
- Simplified activity rules and use of an interest-bearing evergreen security deposit account for the upfront payments of multi-market bidders; and
- Stand-by queue bidding for the PCS 10 MHz blocks.

Adoption of the proposals set forth by GTE in this petition for reconsideration will more effectively achieve the Commission's competitive bidding goals and better serve the public interest.

Respectfully submitted,

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June 3, 1994

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Petition for Partial Reconsideration" have been mailed by first class United States mail, postage prepaid, on the 3rd day of June, 1994 to all parties of record.


Ann D. Berkowitz